

**Remarks**

Claims 1-7, 9, and 11 are pending in the subject application. Claim 12 is new.

**Double Patenting:**

The Examiner has indicated that “should claim 1 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof.”

Applicants acknowledge the Examiner’s objection. If a proper double patenting rejection is maintained until one or both of the involved claims becomes final, or until the double patenting objection is the only objection remaining relative to the two claims, Applicants will cancel one of the objected to claims.

**Claim Rejections – 35 USC §112:**

Claim 6 is rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner states that “‘Switch, especially a microswitch’ is indefinite per the statute as the bounds of the claim are uncertain.”

The Applicants have amended claim 6 to remove the language “especially as a microswitch” to overcome this rejection. As amended, claim 6 now recites that the “sensor (12) is designed as a switch”. Additionally, the Applicants have added claim 12 to depend from amended claim 6 to further define the switch by reciting that “the switch is further defined as a micro-switch”. Support for this amendment can at least be found in paragraph [0017].

Accordingly, this rejection is overcome and should be withdrawn.

**Claim Rejections – 35 USC §103:**

Claims 1-3, 5-7, 9, and 11 are rejected under 35 USC §103(a) as being unpatentable over Okada et al. in view of Porter et al. and either Prenger et al. or Kaltz et al. Claim 4 is rejected under 35 USC §103(a) as being unpatentable over Okada et al. in view of Porter et al. and either Prenger et al. or Kaltz et al., as applied to claim 1, and further in view of Hacker. Claims 1-7 and 11 are rejected under 35 USC §103(a) as being unpatentable over Mertin et al. in view of Nagai et al. and either Prenger et al. or Kaltz et al.

Section 103(a), establishes that “a patent may not be obtained though the invention is not identically disclosed or described as set forth in [Section 102], if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.” 35 USC §103(a), MPEP 2141. As reiterated by the Supreme Court in *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), the framework for the objective analysis for determining obviousness under 35 USC §103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:

- (A) Determining the scope and content of the prior art;
- (B) Ascertaining the differences between the claimed invention and the prior art;
- (C) Resolving the level of ordinary skill in the pertinent art.

MPEP 2141. The key to supporting any rejection under §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. MPEP 2143. The Supreme Court in *KSR* unequivocally requires that any analysis leading to a conclusion of obviousness “should be made explicit” to facilitate subsequent review, *see also* MPEP 2143. According to *KSR*, the Examiner should establish an “apparent reason” to modify the reference or to combine reference teachings. Additionally, when evaluating claims for obviousness under 35 USC 103, all the limitations of the claims must be considered and given weight. MPEP 2143.03.

**Rejection of claims 1-3, 5-7, 9, and 11 under Section 103(a) over Okada et al. in view of Porter et al. and either in view of either Prenger et al. or Kaltz et al.:**

With respect to claims 1 and 11, the Examiner states that “Okada et al. have all claimed details less the disclosure for manual top movement and the handle for manually moving the top. Porter et al. teach, prior to the invention of applicant, (col. 4, lines 51-54) that motor failure of a convertible top can be overcome via manual movement and convertible top structure with a handle, allowing such manual movement is taught by either of the patents to Prenger et al. or Kaltz et al. in the shape of the front bow, fully graspable for closing.” The Examiner further states that “[i]t would have been obvious to one of ordinary skill to provide in Okada et al. manual override of a convertible top motor drive as taught by Porter et al. and a handle shaped front bow as taught by either Prenger et al. or Kaltz et al. in

order to move the tope manually upon automatic motor failure from a convenient position within the passenger compartment.”

The Applicants have amended claim 1 to replace the language “in which the convertible top (1) is closable, automatically” with the following language “which activates an automatic latching of the convertible top,” as suggested by the Examiner on page 2 of the present office action to overcome the rejection. As amended, Okada et al. in view of Porter et al. and either in view of either Prenger et al. or Kaltz et al. fail to disclose teach or suggest each and every element of claims 1 and, as amended.

Therefore, the rejection of claim 1 is overcome and is allowable for at least this reason. Also, claims 2, 3, 5-7, 9, and 11, which depend from allowable claim 1, are allowable for at least the same reasons that claim 1 is allowable.

**Rejection of claim 4 under Section 103(a) over Okada et al. in view of Porter et al. and either Prenger et al. or Kaltz, as applied to claim 1, and further in view of Häcker:**

The Examiner states that “[i]t would have been obvious to one of ordinary skill to provide in the combination above a release operating element 26 as taught by Hacker in order to control the pre-opening of the roof or conversely to release the latch upon CPU failure.”

Claim 4 depends from allowable claim 1 and is allowable for at least the same reasons that claim 1 is allowable.

**Rejection of claims 1-7 and 11 under Section 103(a) over Mertin et al. in view of Nagai et al. and either in view of either Prenger et al. or Kaltz et al.:**

With respect to claims 1 and 11, the Examiner states that “Mertin et al. teach[es] a power operated latching device for a convertible at a windshield header, col. 3, line 7, using a hydraulic motor.” The Examiner also states that “Nagai et al. teach[es] that a power operated latch for a manually driven vehicle lid comprises closure elements 6 and 8, motor drive unit “M” for the latch, wherein the lid is manually driven to a pre-closure position, and a catching position, figure 3, ‘in which the convertible top is closable, automatically’ and wherein the device includes a sensor 35a, figure 5 and a control unit 47 to activate the element 8.” The Examiner further states that “[b]oth Prenger et al. or Kaltz et al. teach that a convertible top frame may have a handle shape in order to grasp same” and that “[i]t would have been obvious to one of ordinary skill to provide in Mertin et al. an electric power operated latch as taught by Nagai et al. and structure the convertible top as taught by either Prenger et al. or

Kaltz et al. to enable manual grasping.”

Claims 1 and 11 have been amended to recite, in part, that “by which the convertible top (1) is movable manually from a pre-closure position, at a spacing from the body-frame part (4), to overcome a dead center on the body frame part (4), until a catching position is achieved, which activates an automatic latching of the convertible top.” (Emphasis added). Support for this amendment can at least be found in paragraph [0036] of the application. As amended, claim 1 now requires that the convertible top (1) be moved by manual force from the pre-closure position to *overcome a dead center position* on the body-frame part (4) *until* a catching position is achieved. Providing a defined stopping position via the dead center at a spacing from the body frame part would prevent the motor from ultimately banging into the body-frame part and damaging the latching mechanism. The manual movement to overcome the dead center until the latching position is achieved would be less forceful than if the motor were used.

Mertin et al., Nagai et al., Prenger et al., and Kaltz et al. each fail to mention *manual* movement of a convertible top from the pre-closure position, *past dead center*, to the catching position.

Instead, Mertin et al. *only* teaches a “power-assisted lock...used for closing soft convertible tops against the frame of the windshield...” See col. 3, line 7-8. Mertin et al. fails to teach a convertible top having a handle element, by which the convertible top is movable *manually* from a pre-closure position, at a spacing from the body-frame part, to *overcome a dead center* on the body frame part, until a catching position is achieved, which activates an automatic latching of the convertible top, as required by claims 1 and 11. Mertin et al. also fails to teach that the closure device includes a sensor that detects assumption of the catching position of the convertible top and sends signals to a control unit of the drive unit, where the control unit, based on the signal of sensor, actuates a drive unit to activate at least one closure element or mating closure element to attach the convertible top, as required by claims 1 and 11. More specifically, not only does Mertin et al. fail to teach how the convertible top is moved into the position where the power-assisted lock is activated, but Mertin et al. fails to disclose moving the manually moving a convertible top to overcome dead center until a catching position is reached, as required by claims 1 and 11.

Nagai et al. *only* teaches a power operated latch for a trunk lid where “[w]hen the trunk lid is closed, the lowering thereof to its closed position is electrically detected by a trunk lid sensor and, in response to it an electrical driving device including an electric motor, is operated...[to move] to a locking position.” See Abstract. Nagai et al. fails to teach a convertible top having a handle element, by which the convertible top is movable *manually* from a pre-closure position, at a spacing from a body-frame part, to *overcome a dead center* of the body-frame part, until a catching position is achieved, which activates an automatic latching of the convertible top, as required by claims 1 and 11. Therefore, not only does Nagai et al. fail to teach a handle element and a convertible top, but Nagai et al. also fails to disclose manually moving a convertible top to **overcome dead center** until a catching position is reached, as required by claims 1 and 11.

Accordingly, the requirement of manually moving the convertible top, via a handle element, from a pre-closure position, to **overcome dead center** of the body-frame part, **until** a catching position is achieved and that, in turn, activates a closure element, is not expressly or inherently disclosed by Mertin et al. or Nagai et al.

While Prenger et al. and Kaltz et al. each disclose a handle element for manually moving a convertible top, each of these references also fails to remedy the deficiencies of Mertin et al. and Nagai et al. and the Examiner has not provided a reason to modify either of these references to do so.

The Examiner has failed to provide an apparent reason as to why it would be obvious to one of ordinary skill in the art at the time the invention was made to combine the convertible top of Mertin et al. with the latch for the trunk lid of Nagai et al. and with the handle elements of either Prenger et al. or Kaltz et al. to require manual movement of a convertible top. Furthermore, each of Mertin et al., Nagai et al., Prenger et al., and Kaltz et al. fails to teach a **overcoming dead center** of a body-frame part that is spaced from the body-frame part by manual movement **until** a catching position is achieved, as required by claims 1 and 11. “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, [the Examiner must provide] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, at 1396, quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results

would have been predictable to one of ordinary skill in the art.” MPEP § 2143.01(III) citing *KSR*, 82 USPQ2d at 1396.

Therefore, the rejection of claim 1 is overcome and is allowable for at least this reason. Also, claims 2, 3, 5-7, 9, and 11, which depend from allowable claim 1, are allowable for at least the same reasons that claim 1 is allowable.

Conclusion

It is therefore respectfully submitted that all claims are in condition for allowance, which action is requested.

Respectfully submitted,

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